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7 PATRICIA JO CINI, et al.,
8 Plaintiffs,
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10 v.
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12 MERCEDES-BENZ USA, LLC,
13 Defendant.
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10 Case No. 24-cv-00288-RS
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**ORDER DENYING MOTION TO
REMAND**

I. INTRODUCTION

15 Plaintiffs Patricia Jo Cini and Robert Lawrence Cini (Plaintiffs) initially filed this suit
16 against Defendant Mercedes-Benz USA, LLC (Defendant) in the Superior Court of California,
17 County of San Mateo, on October 30, 2023. On January 17, 2024, Defendant removed the case to
18 the Northern District of California, asserting both diversity and federal question jurisdiction
19 pursuant to 28 U.S.C. §§ 1332, 1331 and 15 U.S.C. § 2310. Plaintiffs move to remand back to
20 state court. For the reasons explained below, Plaintiffs' motion is denied, and removal is proper.
21 Plaintiffs also filed certain evidentiary objections to Defendant's notice of removal, however the
22 objections represent Plaintiffs' substantive arguments in the motion to remand. Accordingly, the
23 evidentiary objections are overruled.
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II. BACKGROUND

25 This case is about Plaintiffs' purchase of a 2020 Mercedes-Benz GLE (the "vehicle") that
26 was manufactured or distributed by Defendant. The vehicle was covered by an express written
27 warranty. During the warranty period, the vehicle allegedly developed nonconformities to the
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1 warranty including defective seats, abnormal wear, and fit and finish defects. The operative
2 Complaint advances six causes of action against Defendant, asserting violations of the Song-
3 Beverly Consumer Warranty Act (“the Song-Beverly Act”), also known as California’s “lemon
4 law,” and the Magnuson-Moss Warranty Act (“the Magnuson-Moss Act”). Defendants insist that
5 upon becoming apprised of the amount in controversy at issue in Plaintiffs’ Complaint, it timely
6 filed its removal notice based on both diversity and federal question jurisdiction.

7 Plaintiffs’ motion to remand has three bases: first, Defendant’s removal was untimely
8 because it was not filed within 30 days of service; second Defendant’s citizenship allegations are
9 speculative and insufficient; and third, the amount-in-controversy allegations are similarly flawed.

10 III. LEGAL STANDARD

11 A defendant may seek removal of an action based on federal question jurisdiction or
12 diversity jurisdiction pursuant to 28 U.S.C. § 1441. There is a presumption against federal
13 jurisdiction and “the burden of establishing the contrary rests upon the party asserting
14 jurisdiction.” *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (quoting
15 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). A “notice of removal may
16 be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an
17 amended pleading, motion, order, or other paper from which it may first be ascertained that the
18 case is one which is or has become removable.” *Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d
19 1136, 1139 (9th Cir. 2013). If the case as stated by the initial pleading is not removable, a notice
20 of removal may be filed within 30 days after “receipt of a copy of an amended pleading, motion,
21 order or other paper from which it may first be ascertained that the case is one which is or has
22 become removable.” 28 U.S.C. § 1446(b)(3). “These two 30-day periods are not the exclusive
23 periods to remove; provided that neither is triggered, a defendant may remove at any time based
24 on the results of its own investigations.” *Anaya v. Mars Petcare U.S., Inc.*, No. ED CV 21-1603
25 PSG (KKx), 2021 WL 5578724 at *2 (C. D. Cal. Nov. 29. 2021) (citing to *Roth v. CHA*
26 *Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1123 (9th Cir. 2013). “The threshold requirement for
27 removal under 28 U.S.C. § 1441 is a finding that the complaint contains a cause of action that is

1 within the original jurisdiction of the district court.”” *Ansley v. Ameriquest Mortgage Co.*, 340
2 F.3d 858, 861 (9th Cir.2003) (quoting *Toumajian v. Frailey*, 135 F.3d 648, 653 (9th Cir. 1998)).
3 Additionally, “[i]f at any time before final judgment it appears that the district court lacks subject
4 matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

5 **IV. DISCUSSION**

6 **A. Untimeliness**

7 Defendant removed the case to federal court 78 days after the Complaint was filed in state
8 court, and Plaintiffs insist this gap renders Defendant’s removal notice untimely under Sections
9 1446(b)(1) and 1446(b)(3). The Ninth Circuit has held that the two 30-day periods in Sections
10 1446(b)(1) and 1446(b)(3) are merely “periods during which a defendant must remove if one of
11 the thirty-day time limits is triggered” and a defendant may “remove outside the two thirty-day
12 periods on the basis of its own information, provided it has not run afoul of either of the thirty-day
13 deadlines.” *Roth*, 720 F.3d at 1125. Defendant insists that removability was not readily
14 ascertainable from the face of the Complaint, and it removed once it discovered, by its own
15 investigation, that the case was removable. Regardless, Plaintiffs’ procedural objection to
16 Defendant’s notice of removal is waived because their own motion to remand was filed more than
17 30 days after the notice of removal.¹ 28 U.S.C. § 1447(c) (“A motion to remand the case on the
18 basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after
19 the filing of the notice of removal under section 1446(a)”; *see also Maniar v. F.D.I.C.*, 979 F.2d
20 782, 784–85 (9th Cir. 1992) (“We hold that untimely removal is a procedural defect and not
21 jurisdictional and that § 1447(c) limits a district court’s power to remand a case *sua sponte* for
22 such a procedural defect.”)).

23 **B. Diversity Jurisdiction**

24 In its notice of removal, Defendant asserts complete citizenship diversity with Plaintiffs on
25 the basis that the parties are citizens of different states and the amount-in-controversy exceeds
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27 ¹ The notice of removal was filed on January 17, 2024, and the motion to remand was filed on
February 21, 2024.

1 \$75,000. According to Defendant, it is a Delaware limited liability company with its principal
2 place of business in Georgia, and has only one member, the Mercedes-Benz North America
3 Corporation, which is a Delaware corporation with its principal place of business in Michigan. *See*
4 *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (“[A]n LLC is a
5 citizen of every state of which its owners/members are citizens”). Defendant also asserts that,
6 based on the signature on the purchase agreement for the vehicle, Plaintiffs are residents of San
7 Mateo County, California. Further, while the Complaint is silent as to damages, Defendant
8 calculates the amount-in-controversy to exceed the \$75,000 threshold required for diversity
9 jurisdiction.

10 Plaintiffs insist that the notice of removal contains only bare allegations as to the
11 citizenship requirement and potential damages. While Plaintiffs do not challenge any
12 representations about Defendant’s own citizenship, they argue that Defendant’s claims about
13 Plaintiffs’ citizenship and residency are unfounded. However, Defendant based its determination
14 on the purchase agreement for the vehicle, which indicated that Plaintiffs resided in San Mateo
15 County, California. Plaintiffs could have refuted that reasonable conclusion by simply stating their
16 citizenship in their motion to remand but failed to do so. Plaintiffs also failed to file a reply brief
17 addressing this omission.

18 Plaintiffs next argue that Defendant has failed to meet its burden with regard to the
19 amount-in-controversy. For a federal court to have diversity jurisdiction over a case, the parties
20 must not only have different state citizenship, but the amount at issue must exceed \$75,000. 28
21 U.S.C. § 1332. A removing defendant need not “prove to a legal certainty that the amount in
22 controversy requirement has been met.” *Dart Cherokee Operating Co., LLC v. Owens*, 574 U.S.
23 81, 89 (2014) (citations omitted). “Removal...is proper on the basis of an amount in controversy
24 asserted...if the district court finds, by a preponderance of evidence, that the amount in
25 controversy exceeds the jurisdictional threshold.” *Id.* at 89 (citations omitted). In order to
26 determine the jurisdictional amount in controversy, a court must “consider whether it is ‘facially
27 apparent’ from the complaint.” *Abrego Abrego*, 443 F.3d at 690. If not, “the court may consider
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1 facts in the removal petition.” *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th
2 Cir. 1997). Bare conclusory allegations are insufficient to determine the jurisdictional amount. *Id.*

3 Here, the removal notice contains more than mere “conclusory allegations” to support
4 Defendant’s contention. Since the Complaint was silent on damages, Defendant investigated
5 Plaintiffs’ allegations, the causes of action, and the requested damages. Plaintiffs seeks
6 reimbursement of the entire amount paid for the vehicle, damages, penalties “two times the
7 amount of actual damages,” reasonable attorney’s fees, prejudgment interest, and other relief. The
8 Song-Beverly Act permits restitution in “an amount equal to the actual price paid or payable by
9 the buyer” and certain collateral damages, as well as civil penalties up to twice the amount of
10 actual damages, which is what Plaintiffs are seeking. Defendant represented that the vehicle was
11 purchased for \$55,316.00, and Plaintiffs could be awarded up to twice that amount in additional
12 damages, for a total of \$165,948 without calculating incidental or consequential damages or
13 attorneys’ fees. Aside from evidentiary objections, Plaintiffs’ motion is bereft of specific
14 arguments casting doubt on Defendant’s calculations other than accusing them of being “bare
15 allegations, without evidentiary foundation, and invit[ing] sheer [sic] speculation regarding all the
16 elements of damages.” However, Defendant’s conclusions are based on Plaintiffs’ pleadings and
17 reasonable calculations of possible damages. Accordingly, the amount-in-controversy exceeds the
18 jurisdictional threshold.

19 **C. Federal Question Jurisdiction**

20 Defendant also removed on federal question grounds. Plaintiffs bring a claim under the
21 Magnuson-Moss Act, a federal statute governing warranties on consumer products. The
22 Magnuson-Moss Act has its own jurisdictional amount-in-controversy requirement, that is, the
23 amount must exceed \$50,000 for federal jurisdiction to be exercised. As explained above,
24 Defendants have shown that Plaintiffs may plausibly recover well over that amount if Defendants
25 are found liable. Therefore, removal is proper under federal question jurisdiction as well.

26 **D. CONCLUSION**

27 For the foregoing reasons, removal was proper. Accordingly, Plaintiffs’ motion to remand

1 is denied.
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IT IS SO ORDERED.

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5 Dated: March 15, 2024
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7 Richard Seeborg
8 Chief United States District Judge
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United States District Court
Northern District of California